

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

IVAN MATTHEWS, 1:05-cv-00016-OWW-SMS-P  
Plaintiff,  
vs.  
E.S. ALAMEIDA, JR., et al., ORDER ADOPTING FINDINGS AND  
Defendants. RECOMMENDATIONS (Doc. 21)  
ORDER DISMISSING ACTION FOR  
FAILURE TO OBEY THE COURT'S  
ORDER AND FAILURE TO STATE A  
CLAIM

Plaintiff Ivan Matthews ("plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On February 17, 2006, the Magistrate Judge filed a Findings and Recommendations herein which was served on plaintiff and which contained notice to plaintiff that any objections to the Findings and Recommendations were to be filed within twenty (20) days. On March 3, 2006, plaintiff filed objections to the

1 Magistrate Judge's Findings and Recommendations.

2       In accordance with the provisions of 28 U.S.C. §  
3 636(b) (1) (C) and Local Rule 73-305, this Court has conducted a de  
4 novo review of this case. Having carefully reviewed the entire  
5 file, the Court finds the Findings and Recommendations to be  
6 supported by the record and by proper analysis.

7       The Court has reviewed plaintiff's objection and finds that  
8 it does not set forth good cause for plaintiff's failure to obey  
9 the Court's order. Plaintiff asserts that he could not obey the  
10 Court's order because he has been "constantly litigating" his  
11 criminal appeal in a different court. (Obj., 1:26-28.)  
12 Plaintiff's litigation demands in other actions do not provide a  
13 basis upon which to excuse plaintiff's failure to respond to the  
14 Court's orders in this case. At the very least, Plaintiff could  
15 have sought an extension of time to comply with the order.  
16 Silence in the face of a court order is not acceptable.

17       In this case, this is the third time the Magistrate Judge  
18 issued a Findings and Recommendations recommending dismissal for  
19 failure to obey a court order. (Docs. 4, 8, 21.) The previous  
20 two times, the Magistrate Judge vacated the Findings and  
21 Recommendations after plaintiff filed objections. (Docs. 6, 13.)  
22 Plaintiff is aware of what will occur when he fails to obey the  
23 Court's orders. The Court has twice exercised leniency, yet  
24 plaintiff again failed to comply with the Court's order and then  
25 tendered a frivolous excuse for his failure to comply. It is  
26 notable that while plaintiff was apparently unable to file any  
27 response at all to the Court's order, he was able to file an  
28 objection once the Findings and Recommendations was issued.

1 There is no good cause to set aside the Findings and  
2 Recommendations and allow plaintiff another opportunity to comply  
3 with the Court's order. The Court will dismiss this action  
4 without prejudice rather than with prejudice. However, this  
5 dismissal counts as a strike under 28 U.S.C. § 1915(g).

6 With respect to plaintiff's proposed amended complaint  
7 lodged with the Clerk's Office on March 13, 2006, the filing is  
8 not signed. Even if the Court had been inclined to set aside the  
9 Findings and Recommendations and review the amended complaint,  
10 unsigned filings are unacceptable. In light of this order, the  
11 Clerk's Office shall return the lodged complaint to plaintiff.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. The Findings and Recommendations, filed February 17,  
14 2006, is ADOPTED IN FULL;
- 15 2. The Clerk's Office shall return to plaintiff his  
16 unsigned, lodged amended complaint; and
- 17 3. This action is DISMISSED, without prejudice, for  
18 plaintiff's failure to obey the court's order of  
19 January 6, 2006, and for failure to state a claim upon  
20 which relief may be granted.

21  
22 IT IS SO ORDERED.

23 Dated: March 28, 2006  
emm0d6

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE